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C O N F I D E N T I A L TEGUCIGALPA 000722

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STATE FOR WHA/CEN, WHA/EPSC, EEB

E.O. 12958: DECL: 08/01/2018
TAGS: [ECON](#) [ETRD](#) [EINV](#) [EFIN](#) [EAGR](#) [HO](#)
SUBJECT: CONSUMER PROTECTION LAW REFLECTS STATIST MENTALITY

REF: A. (C) TEGUCIGALPA 718
 1B. (U) 12/10/2007: EMAIL CORRESPONDENCE BETWEEN
 ROBERT
 1C. ARMSTRONG AND WASHINGTON-BASED TRADE OFFICIALS
 1D. (C) 3/31/2008: EMAIL FROM ROBERT ARMSTRONG:
 TEGUCIGALPA ECONOMIC UPDATE
 1E. (C) 4/21/2008: EMAIL FROM ANDREA
 BROUILLETTE-RODRIGUEZ: RE: ITEMS FROM
 THE MEETING WITH MICHELETTI

11. (SBU) Summary: A new "Consumer Protection Law" that went into effect July 7 reflects a distrust of markets and the principles underlying the World Trade Organization and CAFTA-DR. It creates a new Executive Branch "authority" that can fix prices for any "essential" goods and services if that authority determines that an "emergency" exists or that market failure or absence of "free competition" is working against the interests of consumers. It gives the new authority permission to set price ceilings for an even more broadly defined swath of "necessary" goods and services, and places burdensome new rules on vendors and real-estate insurance providers. We will need to pay close attention to how the law is implemented from the perspective of CAFTA/WTO compliance. With the exception of the insurance industry, the Honduran private sector has decided not to fight the new law. End Summary.

Consumer Protection Law Rammed Through Congress

12. (U) The new Consumer Protection Law was published in the official Gazette (equivalent of the U.S. Federal Register) July 7, more than three months after it passed in Congress. It was rammed through Congress in March after substantive objections and months of debate were ignored in the interest of clearing a legislative backlog.

13. (U) The crux of the new law is contained in Article 8, which establishes a new executive branch enforcement "authority" -- which will be a restructured version of the current Consumer Protection Directorate -- with the mandate to present an annual "Price Forecasting, Stabilization, and Collusion Plan" to the Economic Cabinet. The plan must analyze the basic food basket, "which for reasons of seasonal demand require the participation of the state to neutralize the speculative impact of prices." It also establishes a mechanism to provide subsidies by allowing the "authority" to define financial requirements of its "Price Plan" and include them in the national budget.

14. (U) Article 72 gives the new enforcement authority permission to fix prices or set ceilings on "essential" goods and services if it determines that an "emergency" exists or that market failure or absence of "free competition" is

working against the interests of consumers. The loosely defined swath of "necessary" goods and services subject to price controls include consumer goods, health services, "essential public services of mass use" (read: state-run utilities), and even government procurement of raw materials. Broadly interpreted, this could touch any and all sectors of the Honduran economy.

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Insurance Industry Challenges Constitutionality
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¶5. (U) Article 114 implements a new requirement that insurance companies replace real property in kind in cases of destruction or damage within 60 days. The Article states the replacement must be of a "good or product equal or similar to that lost to the satisfaction of the affected party." The Honduran Chamber of Insurance Providers (CAHDA) has challenged the constitutionality of this article before the Supreme Court, on grounds that in kind replacement of real property is not only unreasonable, but also a breach of existing contracts.

¶6. (C) CAHDA legal counsel told econoff that all CAHDA members, including American-based companies AIG, Pan-American Life, and Cuscatlan (Citibank), have signed on to the court challenge. (Note: Separately, Pan American Life Insurance Group reps told us the company signed on to the appeal only to show solidarity, since PALIG insures only people and not real estate. AIG and Cuscatlan expressed strong interest in seeing the article overturned. End Note) CAHDA Director Jose Luis Moncada said he spoke directly with Chief Justice Vilma

Morales and expects the Supreme Court to rule in CAHDA's favor. If CAHDA wins, only Article 114 would be amended, not the law in its entirety.

¶7. (SBU) CAHDA reps approached the Embassy in early March with concerns about Article 114. Although they were not able to provide an analysis at the time of why they believed the article violates CAFTA, Embassy agreed to mention their concerns to President (Speaker) of Congress Roberto Micheletti during a meeting with the Ambassador. During the meeting, Micheletti demonstrated little understanding of what the legislation actually required of insurance companies, saying it was really aimed at forcing companies to provide payment within a reasonable time frame.

¶8. (SBU) Aside from the insurance providers, no other U.S.-based companies have approached Embassy with concerns about the Consumer Protection Law.

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Rest of the Private Sector Fatalistic
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¶9. (SBU) Officials of the National Council of Private Enterprise (COHEP) told econoffs they had not paid attention to the law since it passed Congress March 31 because COHEP was irritated that Congress ignored "98 percent" of its comments on the bill in the name of expediency, to clear a legislative backlog. COHEP's legal counsel admitted this was "not a very mature reaction," but felt resigned that little would come of filing legal challenges. This decision was also based in part on a Supreme Court ruling last year on a proposed price control law (which later failed). The Court upheld the state's authority to intervene in the Honduran economy, arguing specifically that such interventions do not violate CAFTA-DR or WTO rules.

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Giving New Meaning to "Nickel and Diming"
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¶10. (U) An example of the potentially meddlesome and unenforceable nature of the law is Article 26, which requires

that customers be given exact change for transactions. Currently, consumer goods in stores are often priced at increments of a lempira (e.g. 9.99 lempiras). Although a small supply of 1, 2 and 5 centavo coins still circulates, the Central Bank does not currently produce coins, because the cost of producing them exceeds the value of the coins. As a result, it is common in this largely cash-based economy to round transactions off to the nearest lempira (worth about USD 0.05). The law says that if it is not possible to give exact change, the rounding must be in favor of the customer. Congresswoman Doris Gutierrez of the leftist Democratic Unification Party has demanded that the Central Bank resume production of coins, despite the cost to the treasury.

Comment

¶11. (SBU) The new consumer protection law exemplifies an increasing tendency of the GOH to expand executive power in ways that flout the basic principles reflected in CAFTA-DR. For example, the GOH has recently made increasingly routine use of "emergency" declarations to avoid submitting public contracts to competitive bidding as required by the CAFTA Government Procurement Chapter. This is being done not just with routine purchases but with large-scale infrastructure projects, such as power plants and Zelaya's plans to build a commercial airport on the site of the present Soto Cano Air Base. On July 30 Zelaya announced his intent to join the Venezuelan-led anti-FTA Bolivarian Alternative for the Americas (ALBA) grouping and engineered a ministerial "Oil for Food" declaration that reflects a philosophy antithetical to CAFTA (ref A). He is now maneuvering to formally join ALBA without seeking Congressional approval. Post will monitor closely how the new consumer protection law is implemented (implementing regulations are often 90 percent of the game in Honduras) to be vigilant for possible violations of CAFTA obligations. End Comment.
BROUILLETTE-RODRIGUEZ